Error to Circuit Court, Madison County.

John S. Hale was convicted of unlawfully selling ardent spirits, and he brings error. Affirmed.

Will A. Cook, of Madison, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and *Leon M. Bazile, Second Asst. Atty. Gen.,* for the Commonwealth.

JAMES *v.* McGUIRE.

March 16, 1922.

[111 S. E. 136.]

1. Lost Instruments (§ 8 (1)*)—Grantor Claiming that There Was a Mutual Mistake in the Deed, and that It Had Been Obtained by Fraud, Had Burden of Proof.—In grantee's action to require grantor to re-execute deed which the grantor had obtained possession of and had destroyed, the grantee, claiming that there was a mutual mistake in the deed, and that it had been obtained by deceit and fraud, had the burden of proof on such issues.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 479.]

2. Lost Instruments (§ 8 (3)*)—Evidence Held Not to Prove that There Was a Mutual Mistake in Deed, or that It Was Obtained by Fraud.—Where the grantor conveyed land to grantee in consideration of the right to live in the house with grantee, but thereafter procured possession of the deed and destroyed it, evidence in grantee's action to require grantor to re-execute deed held insufficient to sustain grantor's defense that there was a mutual mistake in the deed, and that it had been obtained by deceit and fraud.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 480.]

3. Lost Instruments (§ 10*)—In Action to Require Re-Execution of Destroyed Deed, Equity May Modify It to Express Intention.—In grantee's action to require grantor to re-execute deed after he had obtained possession thereof, and had destroyed it, defended on the ground that there was a mutual mistake in the deed, and that it had been obtained by deceit and fraud, equity in requiring grantor to re-execute the deed has the right to modify it so as to more clearly express the intention of the parties.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 903.]

Appeal from Circuit Court of City of Lynchburg.

Action by Annie D. McGuire against William R. James. Decree for the plaintiff, and defendant appeals. Amended and affirmed.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Harrison & Long and *S. H. Williams,* all of Lynchburg, for plaintiff in error.

John D. Easley, of Lynchburg, and *William Leigh, Jr.,* of Halifax, for defendant in error.

BARNARD *v.* BARNARD.

March 16, 1922.

[111 S. E. 227.]

1. Divorce (§ 184 (10)*)—Great Weight Attached to Finding of Trial Court on Conflicting Testimony Given Orally in Court.—Under Code 1919, § 5109, providing that the court in divorce suit may require the testimony to be given orally in open court, the appellate court will attach great weight to the finding of the trial court on testimony so heard, where conflicting, notwithstanding provision of the statute that such testimony, when certified, shall stand on the same footing as a deposition regularly taken in the cause, in view of the original act (Acts 1914, c. 90).

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 745.]

2. Statutes (§ 147*)—Change in Phraseology in Revision Presumed Not to Change Meaning.—Where there is a material change between the original act and the provisions thereof in the Code, and where other differences in the phraseology between the original act in the Code do not manifest an intent to change the meaning, and there is no revisors' note indicating what, if any, change was intended by the change in the phraseology of the original act, it will be presumed that no change was intended.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 765.]

3. Divorce (§ 240 (4)*)—Allowance of $100 Alimony Per Month for Support of Wife and Child Held Sufficient.—Where husband was in debt, was a young lawyer with no fixed income or income-producing property, whose income for a year had amounted to $3,500, but for six months prior to the trial had not exceeded $100 a month, allowance of $100 per month to wife, who had been given a divorce, for the the maintenance of herself and child, held sufficient.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 300.]

4. Divorce (§ 298 (1)*)—Welfare of Child of Primary Importance on Question of Custody.—In a divorce case the court, in awarding the custody of a child, will consider the welfare of the child as of primary importance.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 752.]

5. Divorce (§ 298 (1)*)—Decree Giving Father Custody of Child Each Alternate Week Held Proper.—Where the father was as suitable

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.